

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JUSTIN TYRON JACKSON,

Plaintiff

v.

STATE OF NEVADA,

Defendant

Case No.: 2:23-cv-00627-APG-EJY

**Dismissal Order**

Plaintiff Justin Tyron Jackson attempted to bring an action to federal court but did not submit an initiating document. *See* ECF No. 1. On May 8, 2023, the magistrate judge ordered Jackson to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before June 5, 2023. ECF No. 4. The magistrate judge also ordered Jackson to file a complaint on or before June 5, 2023. *Id.* at 1. The magistrate judge warned Jackson that the action could be dismissed if he failed to submit an initiating document and file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. *Id.* at 1-2. That deadline expired and Jackson did not file an initiating document, file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

**I. Discussion**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply

1 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*  
2 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court  
3 order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)  
4 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its  
5 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
6 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*  
7 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*  
8 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

9         The first two factors, the public’s interest in expeditiously resolving this litigation and the  
10 court’s interest in managing its docket, weigh in favor of dismissal of Jackson’s case. The third  
11 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption  
12 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the  
13 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The  
14 fourth factor—the public policy favoring disposition of cases on their merits—is greatly  
15 outweighed by the factors favoring dismissal.

16         The fifth factor requires me to consider whether less drastic alternatives can be used to  
17 correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*  
18 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic  
19 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*  
20 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive  
21 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives  
22 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial  
23 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have

1 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before  
2 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*  
3 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed  
4 until and unless Jackson submits an initiating document and either files a fully complete  
5 application to proceed *in forma pauperis* or pays the \$402 filing fee for a civil action, the only  
6 alternative is to enter a second order setting another deadline. But the reality of repeating an  
7 ignored order is that it often only delays the inevitable and squanders the court’s finite resources.  
8 The circumstances here do not indicate that this case will be an exception: there is no hint that  
9 Jackson needs additional time or evidence that he did not receive the court’s order. Setting  
10 another deadline is not a meaningful alternative given these circumstances. So the fifth factor  
11 favors dismissal.

## 12 **II. Conclusion**

13 Having thoroughly considered these dismissal factors, I find that they weigh in favor of  
14 dismissal. It is therefore ordered that this action is dismissed without prejudice based on  
15 Jackson’s failure to file an initiating document and a fully complete application to proceed *in*  
16 *forma pauperis* or pay the full \$402 filing fee in compliance with the magistrate judge’s May 8,  
17 2023, order. The Clerk of Court is directed to enter judgment accordingly and close this case. No  
18 other documents may be filed in this now-closed case. If Jackson wishes to pursue his claims, he  
19 must file a complaint in a new case.

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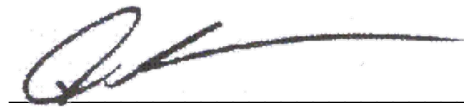
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1 I order that Jackson's form motions for appointment of counsel [ECF Nos. 1-1, 3-1] are  
2 denied as moot.<sup>1</sup>

3 Dated: June 12, 2023



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5 U.S. District Judge

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23 <sup>1</sup> I note that Jackson's form motions for appointment of counsel reference petitions for writ of habeas corpus. If Jackson seeks to pursue a habeas case in a new action, he needs to submit an initiating document such as a petition for writ of habeas corpus to the Clerk of the Court.